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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,774	02/03/2004	David Montague	A8452	9281

23373 7590 10/22/2004  
SUGHRUE MION, PLLC  
2100 PENNSYLVANIA AVENUE, N.W.  
SUITE 800  
WASHINGTON, DC 20037

EXAMINER
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WINNER, TONY H

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 10/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/769,774

Applicant(s)

MONTAGUE ET AL.

Examiner

Tony H. Winner

Art Unit

3611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 30 day MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-94 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-94 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

**Height adjustable**

- a. Species I is identified in Figure 2a,
- b. Species I is identified in Figure 5,
- c. Species II is identified in Figure 6A,
- d. Species III is identified in Figure 7A,
- e. Species IV is identified in Figure 8A,
- f. Species V is identified in Figure 11A,
- g. Species VI is identified in Figure 12A,
- h. Species VII is identified in Figure 12B,
- i. Species VIII is identified in Figure 13A,
- j. Species IX is identified in Figure 14,
- k. Species X is identified in Figure 15A,
- l. Species XI is identified in Figure 25,

**Non-Height adjustable**

- m. Species XII is identified in Figure 16A,
- n. Species XIII is identified in Figure 16B,
- o. Species XIV is identified in Figure 16C,
- p. Species XV is identified in Figure 17,
- q. Species XVI is identified in Figure 18,

- r. Species XVII is identified in Figure 19A,
- s. Species XVIII is identified in Figure 20A,
- t. Species XIX is identified in Figure 23B,
- u. Species XX is identified in Figure 24A,

**Tool Height Adjustment**

- v. Species XXI is identified in Figure 21A,
- w. Species XXII is identified in Figure 22A,
- x. Species XXIII is identified in Figure 23A,

**Height Adjustable and Fold-down**

- y. Species XXIV is identified in Figure 26A,
  - z. Species XXV is identified in Figure 26B,
2. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim appears to be generic.
  3. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.
  4. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims

are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

5. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

6. A telephone call is normally made prior to sending-out a written election requirement. However, per Section 812.01 of the MPEP, a telephone call is not required if the species election is considered complex, as is the case for this Instant Application.

7. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

8. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Anthony H. Winner whose telephone number is (703) 306-5957. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

  
**TONY WINNER**  
**PATENT EXAMINER**  
10/17/04